Business Mergers

by

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BUSINESS MERGERS

A MULTITUDE of mergers during the past four years—outstripping anything of the sort since the 1920s—has revived discussion of the whys and wherefores of business consolidation. And it has raised once again the old question of how far the process of combination can go before it does violence to the public interest. Studies conducted under auspices of the Department of Justice and the Federal Trade Commission, due for early completion, may help to provide an answer. However, the factors involved are so many and so complex that it is never certain that today's judgments will hold good under tomorrow's conditions.

Mergers have been on the increase since the outbreak of the Korean war in 1950, but it was last year's flood of business consolidations, affecting some well known corporations, that did most to stir fears of spreading monopoly and lessened competition. Big-name mergers in 1954 joined such enterprises as the Corn Exchange and Chemical banks in New York, Olin Industries and Mathieson Chemical, Hudson and Nash, Packard and Studebaker, Burlington Mills and Pacific Mills, and General Dynamics and Consolidated Vultee. Major mergers currently planned include consolidation of New York's great Chase and Manhattan banks, of American Woolen, Textron, and Robbins Mills, and of Sunray and Mid-Continent Oil.

One observer has estimated that mergers of important corporations are being effected at the rate of about 45 a month and that probably a score of lesser companies are absorbed daily.[1] Data released by the Federal Trade Commission last October showed that nearly 300 mergers and acquisitions occurred among manufacturing and mining concerns alone during the first half of 1954; the total for the years 1951-1954 probably was around 3,000. These figures may be compared with those for the three earlier merger movements of major proportions. The first great merger

[1] William B. Harris, "The Urge to Merge," *Fortune*, November 1954, p.102.

period, 1898-1903, was marked by the formation of 234 so-called trusts; the second, 1926-1929, witnessed more than 3,900 mergers; and the third, 1940-1947, about 2,000.

F.T.C. Chairman Edward F. Howrey has cautioned that such statistical compilations throw no light on the magnitude, significance, or effects of the mergers that took place. "It is not the number of mergers which is significant," he told a New York State Bar Association group on Jan. 26. "It is their probable impact on competition." The degree to which mergers tend to create monopoly, to challenge the principle of open competition, and to concentrate an increasing share of the market in the hands of a few companies is what concerns the Federal Trade Commission and the Justice Department. The merger trend, Attorney General Brownell said in a Washington address on Jan. 29, has a "major impact on the vitality of free competition." President Eisenhower asserted in his Economic Report, Jan. 20, that the federal government must "create an atmosphere favorable to economic activity" by, among other things, "curbing monopolistic tendencies."

Investigations of Merger Movement by Congress

Sen. Kefauver (D-Tenn.), who headed the Senate crime investigation in 1950-51, charged on Jan. 26 that enforcement of the antimonopoly laws virtually had broken down and called for a congressional inquiry into the merger question. Kefauver was a member of the antimonopoly subcommittee of the Senate Judiciary Committee, which three days earlier had submitted a report urging that Congress investigate "monopoly run wild." Noting that the country was in another great merger movement, and that since 1950 the number of mergers occurring annually had nearly quadrupled, the report recommended prompt action to prevent a "devastating business collapse" such as it said had followed earlier periods of extensive merger activity.

Senate merger investigations may be undertaken by the Judiciary and Interstate Commerce committees. Judiciary Chairman Kilgore (D-W. Va.) said, Feb. 8, that his group probably would ask $175,000 for a monopoly inquiry. The Senate on Feb. 4 gave the Interstate Commerce Committee $200,000 for various investigations, including inquiries into monopolistic practices in broadcasting and transportation.

Rep. Celler (D-N. Y.), chairman of the House Judiciary

Committee and of a special House Judiciary subcommittee set up in January to study monopoly and antitrust problems, has said the latter group's first hearings will cover "general trends, such as the current merger movement." Celler on several occasions has threatened to investigate the pending Chase-Manhattan bank merger. "There can be no doubt," he told the House on Jan. 24, "that the union of the two [banks] will be in defiance of . . . the whole spirit and policy of our antitrust laws." He added that "Something must be done to put a halt to this continued decrease in our bank population."

A bill to require banks contemplating merger to obtain the prior approval of federal banking officials was introduced in the House in mid-January by Celler. Legislation to limit the number of fields in which any corporation might lawfully operate was suggested, Feb. 1, by Rep. Patman (D-Tex.) as a means of curbing monopoly tendencies. It has been reported that Kefauver plans to introduce a bill that would give the F.T.C. the duty of passing on all proposed mergers in advance.

Trade Commission and Attorney General's Studies

The Federal Trade Commission last autumn initiated a "speedy but thorough" investigation of recent corporate mergers and acquisitions. Directing attention to the widespread concern current merger activity had aroused, Chairman Howrey said, Oct. 25, that an analysis of recent consolidations was needed to provide documented facts for the F.T.C., the Justice Department, Congress, and the public.

> We believe [Howrey continued] that information can be obtained to show the effect on competition of the current wave of mergers, and also to determine the nature of the wave and the forces that underlie it. What we propose to do . . . is to correlate all available information, analyze it from an economic standpoint, and arrive at some soundly based conclusions on the nature and significance of the merger movement marking the past few years.

In addition to investigating the "background motivations" and the "underlying economic forces," the F.T.C. study was to go into (1) the procedures followed by corporations in carrying out mergers and (2) the effects of mergers on the development and structure of industry and commerce, "particularly with respect to possible effects on competitive behavior."

At the same time, the F.T.C. disclosed that it had under consideration 209 mergers or acquisitions, mostly in the

baking, paper, textile, dairy, chemical, automotive, and primary metals industries. The commission has instituted legal proceedings in three recent merger cases. It is challenging acquisition by Pillsbury Mills, Inc., of Ballard and Ballard Co., and American Home Foods, Inc.; the acquisition by Crown Zellerbach Corp. of its competitor, St. Helen's Pulp and Paper Co.; and the acquisition by Luria Bros., Inc., of a number of competing steel scrap concerns.

The report of the Attorney General's National Committee to Study the Antitrust Laws should throw additional light on the merger problem. This committee, appointed in August 1953, consists of 62 members, mostly economists and lawyers, including what Attorney General Brownell has called the "cream of the antitrust bar." The group is headed by Stanley N. Barnes, Assistant Attorney General in charge of the antitrust division, and S. Chesterfield Oppenheim of the University of Michigan. Brownell has said the committee would suggest revisions of the antitrust laws to make them "more in keeping with a middle-of-the-road economic and social administration of those laws." Barnes said last summer that he was "seriously concerned" about the current number of mergers, and he told a Washington, D. C., conference of U. S. attorneys in October that the "continuing trend toward mergers" should be watched.

Blocking of Bethlehem-Youngstown Steel Merger

Meanwhile, confusion has arisen over the government's attitude toward future mergers. The Justice Department issued an informal advisory opinion, last Sept. 30, to the effect that a proposed merger of the Bethlehem Steel Corp. and the Youngstown Sheet and Tube Co. would violate the antitrust laws. Following earlier approval of several large mergers in textiles and banking, and notably in the automobile industry, lodging of government objections to merging the country's second and sixth largest steel companies was a surprise to the business community.

When the Attorney General announced disapproval of the steel merger, he did not detail the reasoning on which the opinion was based. Apparently the Justice Department believed that a combination of two companies that were considered substantial competitors would tend to lessen competition in the industry as a whole. F.T.C. Chairman Howrey said recently that the smaller automobile compan-

ies had been permitted to merge in order to enable them to compete more effectively with the giants of the industry. And Assistant Attorney General Barnes had observed at a news conference on Aug. 29 that "the effect on competition . . . not the size of the firm resulting from the merger," was the criterion. "It was on these grounds," according to one financial writer, "that the . . . [government] turned thumbs down" on the proposed Bethlehem-Youngstown merger.[2]

Spokesmen for both Bethlehem and Youngstown have asserted that the proposed combination would not decrease but would increase competition. They indicated that the companies might go ahead with the merger and leave final settlement of the legal question to the courts in any antitrust action brought by the government.

Reasons for New Merger Movement

THE REASONS that have led business enterprises in the past to merge with or to acquire other concerns are many and varied. Traditionally, a company's chief purpose in combining with another has been to gain control of a market, but as J. Fred Weston, author of a study on mergers, has pointed out, "Both market control *and* other advantages may result." Weston has listed the following advantages of external growth (merger or acquisition) over internal growth:[3]

1. Additional facilities may be acquired more quickly and more cheaply.[4]
2. A desired new product, process, or organization may be developed with less risk.
3. Financing an acquisition may be more practical than financing an expansion, because the seller may be more willing than the investing public to accept the purchaser's stock.
4. Development of new products and marketing areas may be accomplished without having to combat competition in the early stages of development.
5. Market control may be secured more rapidly and more easily.

[2] Keith Hutchison, "Corporation Weddings," *The Nation*, Dec. 4, 1954, p. 479. Hutchison noted that the government "must take into consideration not merely the immediate but the ultimate effects" of a merger.

[3] J. Fred Weston, *The Role of Mergers in the Growth of Large Firms* (1953), pp. 74-75.

[4] It has been pointed out, for example, that "Bethlehem couldn't buy plants in the Chicago area for anything like the cost of acquiring them through Youngstown."—*U. S. News & World Report*, Aug. 13, 1954, p. 70.

Companies may gain one or more of the advantages sought through horizontal, vertical, or conglomerate mergers. Horizontal mergers unite enterprises that turn out the same product, as in the case of the Packard and Studebaker companies. Vertical mergers combine concerns that make different components of a product, or manufacturers and their raw-material suppliers, as in the case of H. Daroff & Sons, clothing manufacturers, which controls Botany Mills. Conglomerate mergers bring together companies engaged in dissimilar businesses, as typified by purchase of the Davison Chemical Co. by W. R. Grace & Co., bankers and shippers.

Among reasons for mergers under examination in the F.T.C. study are (1) the desire of some companies to expand more rapidly in order to compete more effectively, (2) the desire of others to reduce competition, (3) the desire of some enterprises to diversify production or integrate operations, and (4) financial difficulties faced by one or more of the companies to be absorbed. The first three of the foregoing reasons concern motivations on the part of purchasers; the fourth, on the part of sellers.

Need to Expand Operations and Gain New Markets

Few, if any, companies can afford not to grow, and combination with other companies may be an easy and inexpensive way to expand. "Growth and merger are so closely related that it is impossible to name a prominent corporation that hasn't a whole series of mergers in its history." [5] Expansion permits large-scale operations with attendant increases in efficiency and economy. Some mergers are undertaken to bring new markets within the reach of a company not represented in certain areas. Access to new markets was generally conceded to be one of the reasons for the proposed Bethlehem-Youngstown merger; Bethlehem would profit from Youngstown's position in the midwestern market; Youngstown from Bethlehem's position in the East. Other mergers may be engineered to enable a company to broaden its market by taking advantage of demand for a new product.

Merging to achieve product diversification not only broadens a company's markets but also increases its stability by enabling it to supply products required by different buyers and at different times. An example is offered by the Bur-

[5] William B. Harris, "The Urge to Merge," *Fortune*, November 1954, p. 103.

lington Mills-Pacific Mills merger, which put Burlington into both the synthetic and natural fiber fields. Another example is the movement of railroad equipment makers into the roadbuilding equipment field. More effective integration of operations may be achieved by acquiring suppliers, as did Chrysler when it bought the Briggs Manufacturing Co., largest independent auto body builder.

Need to Combine for Survival or for Tax Reasons

Companies that have failed or are threatened with failure may seek to unite with other companies as a means of survival. Some observers have contended that the present merger movement was given impetus by the recent recession and the sharpening of competition that accompanied it. High costs and declining volume have made mergers the only way out for a number of companies, particularly in the coal industry and the independent sector of the automotive industry.

Mergers occasionally are motivated by tax considerations, for it is sometimes to the advantage of a money-making company to acquire a concern which has accumulated losses that can be used to reduce the tax liability of the first company. An exhaustive Harvard Business School study of 104 mergers during the 1940-1947 period found that tax considerations appeared to have been a major reason for the sale of about one-third of the assets of those companies with assets of more than $1 million that had been merged.[6]

Timing of mergers may be influenced by movements of stock prices. Weston found that "changes in the level of stock prices represented the greatest influence upon mergers" during the period between the two world wars. "High security prices," he reported, "stimulated mergers by providing gains to the stockholders of constituent companies and . . . to promoters." [7] On the other hand, during the 1940-1947 period, relatively low stock prices tended to encourage mergers, because buyers could acquire additional facilities at less cost by taking over other companies than by direct expansion. During the war years, moreover, expansion of physical facilities, except in the case of industries of the highest essentiality, was drastically limited by government regulations.

[6] J. Keith Butters, John Lintner, and William L. Cary, *Effects of Taxation: Corporate Mergers* (1951), p. 232.
[7] J. Fred Weston, *op. cit.*, p. 81.

Evolution of Legal Restraints on Mergers

RESTRAINTS are imposed on business mergers by two basic federal statutes: the Sherman Act of 1890 and the Clayton Act of 1914. The Sherman Act, directed against monopolization of power in a given field by a single organization, declared illegal every contract, combination, or conspiracy in restraint of interstate or foreign commerce. Monopolies, attempts to monopolize, and conspiracies to monopolize such commerce were made unlawful and subjected to penalties of up to $5,000 fine or one year's imprisonment or both.[8]

The Clayton Act sought to curb the initial development of monopolies by forbidding a corporation to acquire any stock of another corporation, or a holding company the stock of two or more competing corporations, where such acquisition would substantially lessen competition or restrain commerce or tend to create a monopoly. "Congress thus sought to discourage the merger process by curbing two of the easiest methods by which companies could combine—first, stock acquisition, and second, corporate holding company control of competing corporations."[9] Regulation of mergers was made possible by a companion of the Clayton Act. The second 1914 law set up the Federal Trade Commission and empowered it to enter cease and desist orders against corporations violating the Clayton Act and to report antitrust violations to the Attorney General.

Enforcement of the antitrust laws has followed a shifting course. As Attorney General Brownell has noted, those statutes are "not the clearest laws on the books." They have been subject to widely varying interpretations by the courts.

Early Tests of Sherman Act; the "Rule of Reason"

The first test of the Sherman Act came in 1895, when the so-called Sugar Trust case reached the Supreme Court. Although the government established that the trust had

[8] Attorney General Brownell asked Congress on Jan. 21 to increase the maximum fine to $50,000; he said that "The deterrent effect of a $5,000 fine against a large corporation is almost negligible except for the stigma of conviction." President Eisenhower also recommended, in his Economic Report, that the maximum fine for violation of the Sherman Act be substantially increased. A bill to this end passed the House in 1953 but failed of action in the Senate of the last Congress.

[9] Speech by Attorney General Brownell before New York chapter of the Public Relations Society of America, Oct. 1, 1954.

acquired control of 98 per cent of the sugar refined in the United States, the Court ruled that the production monopoly was incidental to the sale of sugar in interstate commerce and preceded such commerce.[10] "This decision not only limited the effectiveness of the Sherman Act, but seemed to call into question the very power of the federal government to deal with trusts." [11] Vitality was restored to the Sherman Act a decade later, however, by the landmark decision in the Northern Securities case. The Court in that case ordered dissolution of a company formed to hold the stock of the competing Great Northern and Northern Pacific railroads.[12] Condemnation of the holding-company merger device temporarily checked the consolidation movement.

Uncertainty as to how far business could go in combining separate companies and how far the government was prepared to go to arrest the process was stirred anew by the Supreme Court's enunciation of the "rule of reason" in its decision in the Standard Oil case in 1911.[13] Pointing out in that decision that only unreasonable restraints were unlawful under the common law, the Court interpreted the Sherman Act as condemning only those agreements which unreasonably limited competition. The question of what was reasonable and what was unreasonable plagued both business and the courts for years thereafter.

Changing Court Views on Business Size and Intent

The Supreme Court ruled in a number of cases during the 1920s that size alone was not sufficient to condemn a corporation under the Sherman Act. Thus the United States Steel Corp., which had been formed by merging 174 companies and which controlled more than 50 per cent of the commerce in steel, was given a clean bill of health. The law, the Court said in 1920, did not make "mere size . . . or the existence of unexerted power an offense." And it adhered to the same doctrine, seven years later, in deciding a case involving the International Harvester Co.[14]

Despite the Steel and Harvester decisions, the Court noted in 1932 that "Size carries with it an opportunity for abuse

[10] United States *v.* E. C. Knight Co., 156 U.S. 1 (1895).

[11] Department of Justice, *Study of the Development of the Antitrust Laws and Current Problems of Antitrust Enforcement* (Report to Monopoly Subcommittee of Senate Select Committee on Small Business, May 23, 1952), p. 4.

[12] Northern Securities Co. *v.* United States, 193 U.S. 197 (1904).

[13] Standard Oil Co. *v.* United States, 221 U.S. 1 (1911).

[14] United States *v.* United States Steel Corp., 251 U.S. 417, 451 (1920); United States *v.* International Harvester Co., 274 U.S. 693 (1927).

that is not to be ignored when the opportunity is proved to have been utilized in the past." [15] Justice Douglas, delivering the opinion of the Court in the Paramount case, seven years ago, appeared to go even further by saying that "Size is in itself an earmark of monopoly power." [16]

Court views on intent as a factor in the creation of mopolies likewise have shifted through the years. A lower court observed in 1916 that intent to monopolize was the "touchstone," and it directed attention to the "deliberate purpose" that the defendant company had manifested.[17] But the government later was relieved of the almost impossible burden of proving specific intent to monopolize. Judge Learned Hand, speaking for a special court in the Alcoa antitrust case in 1945, declared that the company was an unlawful monopoly simply because it had monopoly power with general intent to use that power.[18] The following year the Supreme Court, in the American Tobacco case, cited with approval Judge Hand's opinion in the Alcoa case and held that a showing of actual abuse of monopoly power was not necessary; illegal monopolization consisted of possession of the power and the intent to use it.[19]

Judicial views on size and intent appeared to undergo another change a few years later, however, when the Supreme Court ruled that acquisition by U. S. Steel of the largest steel fabricator on the West Coast did not violate the antimonopoly statutes. By a 5-4 decision, the Court concluded that the government had failed to "prove . . . that the acquisition . . . would unreasonably lessen competition."

> Granting that the sale will to some extent affect competition, the acquisition . . . seems to reflect a normal business purpose rather than a scheme to circumvent the law. United States Steel, despite its large sales, many acquisitions, and leading position in the industry, has declined in the proportion of rolled steel products it manufactures in comparision with its early days . . .
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> Its size is impressive. Size has significance . . . in an appraisal of alleged violations of the Sherman Act. But the steel industry is also of impressive size and the welcome westward extension of that industry requires that the existing companies go into production there or abandon that market to other organizations.[20]

Justice Douglas observed in a dissenting opinion that it was

[15] United States v. Swift & Co., 286 U.S. 106 (1932).
[16] United States v. Paramount Pictures, 334 U.S. 131 (1948).
[17] United States v. Corn Products Refining Co., 234 Fed. 964 (1916).
[18] United States v. Aluminum Co. of America, 148 F. 2d 416 (1945).
[19] United States v. American Tobacco Co., 328 U.S. 781 (1946).
[20] United States v. Columbia Steel Co., 334 U.S. 495, 508, 533 (1948).

"immaterial that a purpose or intent to achieve the result [monopolization] may not have been present."

CLOSING OF CLAYTON ACT'S MERGER LOOPHOLE IN 1950

The Clayton Act, though forbidding one corporation to acquire the stock of another if competition would thereby suffer, did not forbid a corporation to purchase outright the physical assets of another corporation where the result would be monopoly or an approach to monopoly. Hence a way was left open for mergers that otherwise might have brought prosecution under the 1914 act.

Getting around governmental disapproval of particular mergers was additionally facilitated by Supreme Court decisions that tended to hobble the Federal Trade Commission. The Court held that, in cases where a corporation had acquired the stock of another company, the F.T.C. was without power to prevent the merger if the corporation exchanged the stock for the physical assets of the company before the commission could issue a cease and desist order.

The F.T.C. sought for more than a quarter of a century to persuade Congress to close the loophole in the Clayton Act. Finally, in December 1950, the 1914 law was amended to prohibit acquisition of assets, as well as of stock, where the acquisition might result in a substantial lessening of competition. It was conceded generally that the 1950 amendment gave the F.T.C. powers it was intended to have all along and made the Clayton Act the government's strongest antitrust weapon. In closing the merger loophole Congress made it plain that it was furnishing a legal tool—in the words of the Senate Judiciary Committee report on the bill —"to cope with monopolistic tendencies in their incipiency."

In the first major test of the strengthened Clayton Act, the Benrus Watch Co. was restrained from taking control of the Hamilton Watch Co. The Appeals Court opinion, delivered on June 30, 1953, by Judge Jerome Frank, declared that "Amendment of Section 7 [of the Clayton Act] certainly casts doubt on decisions—including . . . United States *v.* Columbia Steel Co. . . . —interpreting that section as it stood previously." Referring to the views expressed in the Senate committee report, the opinion observed that "Interference at an early stage, if possible, seems the paramount aim of the new amendment." [21]

[21] Hamilton Watch Co. *v.* Benrus Watch Co., Inc., 206 F. 2d 738, 741 (1953).

In refusing to countenance the proposed Bethlehem-Youngstown merger, the Attorney General seemed to rely on both the 1950 amendment of the Clayton Act and the Appeals Court decision in the Hamilton-Benrus case. Brownell said on that occasion: "In 1950, Congress sharpened the tools to be used by the Department of Justice in meeting the antitrust problems of today. We intend to use these tools to carry out the policy determined by Congress."

Mergers, Competition, and Public Policy

WHAT EFFECT mergers may have on competition is the crucial consideration to be taken into account in framing antitrust restraints. The problem is greatly complicated by the fact that each merger is unique and presents questions peculiar to the companies involved, to the industry, and to the economic era. F.T.C. Chairman Howrey told a New York Bar Association group, Jan. 26: "The 'urge to merge' is neither good nor bad *per se*. Competition may be injured by some mergers and revitalized by others."

When Attorney General Brownell made known the Justice Department's objections to the Bethlehem-Youngstown merger, he listed nearly a dozen criteria used by the government in judging whether a proposed merger or acquisition might violate the Sherman or Clayton acts:

1. Location, physical and financial size, past acquisitions, products and activities of the merging companies, individually and in combination.
2. Structure and size of the industry in terms of production and capacity.
3. Relative position in the industry of the two companies, individually and combined.
4. The ease with which new competitors may enter the industry.
5. Number of companies active in the industry, their respective size and relative standing in sales and assets.
6. Sales, relative standing, and like factors of the two companies and their competitors in definable market areas.
7. Nature of the industry—infant, static, dynamic, or declining.
8. Effect of proposed merger on sources of raw materials and methods and patterns of distribution.
9. Whether the acquisition would result in a significant reduction in competition.
10. Whether the acquisition would so increase the relative size of the purchasing company as to give it a very substantial advantage over its competitors.

11. Whether relationships between the purchaser and other companies that might be brought about by the merger would result in a lessening of competition.

Public policy on mergers has always been based on the concept that competition is desirable and monopoly abhorrent. Suspicion of, and opposition to, monopoly are a part of American tradition. A concomitant has been a widespread conviction that bigness in business is, in itself, at best ominous and at worst evil.

Paradox in Public Attitude Toward Big Business

There nevertheless are contradictions in the popular attitude toward bigness in business. As A. D. H. Kaplan of the Brookings Institution has observed, big business has been regarded, ever since it became a national issue just before the turn of the century, "both as a symbol of the great national capacity for economic advancement and as a threat to the survival of democracy in business enterprise."

> Investors have shown marked preference for the blue chip securities; consumers have taken avidly to the expanding big-name product lines . . . [But] in contrast to such evidence of approval is evidence of a recurring suspicion that the price of the advantages obtained from big business is the progressive concentration of economic power in fewer and larger units of enterprise. . . .
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> We want to enjoy the technological advantages that large size frequently offers but fear the power that is associated with "excessive" size. . . . We admire the capacity of big business to . . . make . . . [new products] . . . but view with alarm the position it has thus acquired, which has caused many smaller enterprises to become its satellites.[22]

Balancing of these divergent sentiments faces government officials and members of Congress when they attempt to establish the proper course to follow on mergers.

Dispute Over Effects of Bigness on Competition

Despite the traditional American view that bigness and competition are incompatible, it has been argued that competition among a few giants may be more effective than competition among many weaklings. Mergers need not smother competition but, on the contrary, may intensify or broaden it. The government's approval of mergers of weak independent producers in the automobile industry reflected recognition of this theory; the combinations were expected

[22] A. D. H. Kaplan, *Big Enterprise in a Competitive System* (1954), pp. 231, 233.

to give the merged companies enough strength not only to survive but also to offer some degree of competition to the Big Three industry leaders.[23]

The contention that competition may be promoted by mergers sometimes is heard even when the candidates for merger are strong companies. Chairman John J. McCloy of the Chase National Bank, for example, told the bank's stockholders on Jan. 25 that the proposed Chase-Manhattan merger would intensify rather than lessen competition. McCloy emphasized the point that "usefulness," not "bigness," had motivated the plans for union of the two banks.

Defenders of bigness in business assert that size does not kill competition. Kaplan maintains that the "iron test of the competitiveness of big business . . . is whether it makes available increasingly numerous, varied, and significant market alternatives—or whether . . . it tends to narrow . . . the range of choice." He insists that, although big business seldom conforms to the classical conception of the pure competitive market, in which there are innumerable buyers and sellers, the typical big business of today meets the "iron test" because it "increases the range of choice . . . by creating product and service variations." Kaplan concludes that "big business growth has proved compatible with workable dynamic competition."[24]

Although the view that bigness is beneficial has won increased acceptance, the opposite view—that big corporations, if permitted, will swallow the smaller ones, that bigness stifles competition, that excessive size may lead to monopoly—still receives vigorous expression. Rep. Celler, urging action to block the proposed Chase-Manhattan bank merger, asserted in the House on Jan. 24 that "The businessman and merchant . . . will be at the mercy of a financial colossus, which because of the lack of competition, will be able to set the standards providing for the bank's best interest to the detriment of small businessmen and other customers." The merger, Celler insisted, will "substantially lessen the competition that large competing banks provide and tend to create a monopoly to the disadvantage of the people of New York and . . . the nation in general."

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[23] It has been suggested that achievement of this objective may eventually require the recently combined companies themselves to merge into a single competitor of the Big Three. See "Competition in Automobiles," *E.R.R.*, Vol. II 1954, p. 459.

[24] A. D. H. Kaplan, *op. cit.*, pp. 233, 234, 246.

George J. Burger, vice-president of the National Federation of Independent Business, has voiced concern about the effects the past year's merger trend may have on the future of small business. Joseph L. Dubow, executive director of the Merchants Ladies Garment Association of New York, said on Jan. 26 that the tendency toward mergers in the garment industry was dangerous. Dubow told the National Coat and Suit Industry Recovery Board, which represents both management and labor, that "Monopoly, merger, and consolidation proceed at an ever accelerated pace, and the small businessman remains the subject of statements of high moral purpose, but the victim of economic oblivion."

Effects of Mergers on Size and on Concentration

To determine whether mergers or internal growth were mainly responsible for the size of corporations and their position within the respective industries, J. Fred Weston analyzed the development between 1900 and 1948 of 74 large companies in industries showing a high degree of concentration. Estimating that only about one-fourth of the growth of the concerns studied was directly attributable to mergers, Weston concluded that "The direct effect of mergers on the absolute size of large firms appears to have been small." [25]

When the influence of mergers on the position the firms had attained in their respective industries was analyzed, Weston found that, paradoxically, both internal expansion and external acquisition accounted for a relatively small degree of industrial concentration. The explanation was that combinations in the first major merger period—from 1898 to 1903—had produced great concentration in many industries. "Hence," Weston wrote, "present levels of industrial concentration are accounted for, almost entirely, by the high degree of concentration resulting from the early merger movements. . . . Mergers during the last two decades have not had appreciable effects on industrial concentration." [26]

J. Spencer Love, chairman of Burlington Mills Corp. (now Burlington Industries, Inc.), which participated in one of the largest recent mergers, said in New York on Nov. 9 that an examination of mergers in the textile industry

[25] J. Fred Weston, *The Role of Mergers in the Growth of Large Firms* (1953), p. 30.

[26] *Ibid.*, pp. 48, 102-103. Weston noted that data required for his analysis of concentration were available for only 25 firms.

would show that the large companies control no greater share of the market than they did previously and that there were more companies in the industry than ever. F.T.C. Chairman Howrey said, Jan. 26, that "Evaluation of the post-Korean merger pattern must be largely speculative." But he gave it as his personal view that "Taken by itself, and in terms of the relative share of the economy involved, the recent merger wave may not be quite as significant as the wave of the 1920s and does not compare with the trust-forming era of 1887-1904." Howrey warned, however, that "This comparison in no way serves as a basis for looking upon the current wave with equanimity."

A recently published study by the Federal Trade Commission compared the levels of overall concentration in manufacturing in 1935 and in 1950. In 1935 the 200 largest manufacturing corporations accounted for nearly 38 per cent of the total value of product of all manufacturing enterprises; by 1950 the proportion had risen to about 41 per cent. During the same period, the number of manufacturing firms increased from about 206,000 to around 303,000.[27]

Theodore K. Quinn, a former vice president of General Electric, asserted before the congressional Joint Committee on the Economic Report, Feb. 1, that "As few as 200 industrial giants own outright the most important half of all American industry." The Commerce Department's Business Advisory Council reported in December 1952, however, that the "200 largest corporations" held no more than "20 per cent of total wealth"; the council maintained that the question of "How big is big business?" should more properly be phrased, "How big relative to a very big economy?" Gross national product has grown more than tenfold since 1910.

F.T.C. surveys of the concentration of production in manufacturing show that in 1947—the last year of the 1940-1947 merger period and the last year for which detailed figures are available—the four leading companies in each of 24 major industries produced more than 75 per cent of the industry's total output.

Business Bigness and Pressure for Public Control

One of the most disturbing implications of the merger phenomenon is the possibility that business collectivism may

[27] Federal Trade Commission, *Changes in Concentration in Manufacturing, 1935 to 1947 and 1950* (1954), pp. 17, 19.

ultimately compel government collectivism. Those who fear such an eventuality have pointed out that the concentration of economic power in private hands has been accompanied by a steady concentration of political power in the federal government.

Morris Ernst, long-time opponent of bigness in business and government, warned recently of the "danger of statism through merger."

> It is my best judgment that our republic will go to statism not through any political "isms," but solely because in a market place of diminishing competition the people . . . will unwisely demand government supervision, regulation, and ultimate operation. For example, it would seem to me to be a good guess that if we end up in a decade with only two automobile companies producing all our conveyances . . . , the people . . . will be persuaded that there is not enough competition . . . and that ex-competition the government should do the job.[28]

In the last great merger movement the Federal Trade Commission cautioned that if mergers and concentration continued to increase, the government might be "impelled to step in and impose some form of direct regulation in the public interest." [29]

[28] Letter to the *New York Times*, Dec. 17, 1954.
[29] Federal Trade Commission, *The Merger Movement* (1948), p. 68.